

Todd E. Zenger (5238)  
KIRTON McCONKIE  
60 East South Temple, Suite 1800  
Salt Lake City, Utah 84111  
Phone: (801) 328-3600  
Fax: (801) 321-4893  
Email: [tzenger@kmclaw.com](mailto:tzenger@kmclaw.com)

Patrick Bright, Esq. (prospective *pro hac vice*)  
WAGNER, ANDERSON & BRIGHT, PC  
10524 W. Pico Blvd., Suite 214,  
Los Angeles, CA 90064  
Phone: (213) 700-6637  
Fax: (310) 559-9133  
Email: [pbright@BrightPatentLaw.com](mailto:pbright@BrightPatentLaw.com)

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

ARSUS, LLC, a Utah entity,  Plaintiff,  vs.  JOHN H. FIRMAGE, INC. DBA BMW OF MURRAY, a Utah entity,  Defendant.	Civil Action No. 1:17-CV-00125-BCW  Magistrate Judge Brooke C. Wells  COMPLAINT AND JURY DEMAND
---	---

**INTRODUCTION**

Plaintiff, ARSUS, LLC, a Utah entity, by and through its attorneys, complains of defendant BMW of Murray, a dba of John H. Firmage, Inc., and seeks judgment of monetary damages and other relief for patent infringement.

The automobiles offered for sale and sold by defendant BMW of Murray which include BMW's Active Driving Assistance Plus infringe the patents of plaintiff ARSUS, LLC.

### **JURISDICTION AND VENUE**

1. This action arises under the patent laws of the United States, 35 U.S.C. § 271 et. seq. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1338.

2. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400.

### **PARTIES**

3. Plaintiff, ARSUS, LLC, a Utah entity ("ARSUS"), is organized and operating under the laws of the State of Utah with a principal place of business at 350 West, 2000 South, Perry, Utah 84302. By assignment, ARSUS has all necessary legal rights to bring this action. ARSUS is the owner of all rights in U. S. Patent 8,634,989 (the "989 patent"), issued January 21, 2014, and entitled ROLLOVER PREVENTION APPARATUS, (Ex. 1) and in U. S. Patent 9,580,103 (the "103 patent"), issued February 28, 2017, and entitled ROLLOVER PREVENTION APPARATUS (Ex. 2) (collectively, the "ARSUS patents").

4. No other person or entity has ownership interest or rights in the ARSUS patents.

5. Defendant, John H. Firmage, Inc. is a Utah entity doing business as BMW of Murray ("BMW of Murray") in this judicial district and having a work address of 4735 S. State, Murray, UT 84107.

### **PATENT INFRINGEMENT ALLEGATIONS**

6. Bayerische Motoren Werke of Germany ("BMW") manufactures certain automobiles that include what BMW calls Active Driving Assistance Plus ("ADAP"). ADAP operates to prevent vehicle rollover. See Exhibits 3-5 to this Complaint, describing BMW's ADAP evasion aid/rollover prevention characteristics.

7. BMW of North America (“BMW NA”) imports automobiles of BMW into the United States for sale and distribution to U.S. dealers such as BMW of Murray, including ADAP adapted vehicles of BMW.

8. The ADAP adapted vehicles of BMW incorporate a rollover prevention apparatus that allows the vehicle to be steered within a non-rollover steering range of motion of the vehicle but prevents the vehicle from being steered beyond a rollover threshold of the vehicle.

9. The ADAP adapted vehicles of BMW may be manually steered within a non-rollover steering range of motion of the vehicle and when ADAP is operative the vehicle automatically imposes a steering angle limitation so that the vehicle is prevented from being steered beyond a rollover threshold of the vehicle.

10. BMW of Murray offers for sale and sells ADAP adapted vehicles of BMW.

11. The ADAP adapted vehicles of BMW offered for sale and sold by BMW of Murray infringe claims 1 to 4 of the ‘989 patent, and claims 1 to 5, 7 to 11, 13 to 18, 20 and 21 of the ‘103 patent (collectively, these claims of the ‘989 and ‘103 patents are called the “asserted claims”).

12. For example, Claim 1 of the ‘989 patent claims:

A rollover prevention apparatus that allows a vehicle to be steered within a non-rollover steering range of motion of said vehicle but prevents said vehicle from being steered beyond a rollover threshold of said vehicle.

13. Claim 1 of the ‘989 patent reads on the ADAP adapted vehicles of BMW offered for sale and sold by BMW of Murray resulting in infringement of claim 1 of the ‘989 patent.

14. For example, Claim 1 of the ‘103 patent claims:

A vehicle having a first mode and a second mode and adapted such that when said vehicle is in said first mode, said vehicle is manually steerable within a non-rollover

steering range of motion of said vehicle, and such that when said vehicle is in said second mode, said vehicle automatically imposes a steering angle limitation such that said vehicle is prevented from being steered beyond a rollover threshold of said vehicle.

15. Claim 1 of the '103 patent reads on the ADAP adapted vehicles of BMW offered for sale and sold by BMW of Murray resulting in infringement of claim 1 of the '103 patent.

16. The offer for sale and sale of ADAP adapted vehicles of BMW by BMW of Murray constitute direct infringement of the asserted claims.

17. BMW of Murray's infringement of the asserted claims has caused and will continue to cause ARSUS monetary damages in an unknown amount to be determined at trial and irreparable harm.

**RELIEF REQUESTED**

WHEREFORE, plaintiff, ARSUS, seeks judgment and relief as follows:

- a. Judgment in favor of ARSUS finding that BMW of Murray is liable for direct infringement of the asserted claims.
- b. An accounting for and an award of monetary damages, to be determined at trial, for infringement of the asserted claims.
- c. A permanent injunction precluding further infringement.
- d. For reasonable attorney fees, costs and interest.
- e. For such further relief as the Court may deem proper.

**JURY DEMAND**

A demand is hereby made for trial by jury.

DATED this 27<sup>th</sup> day of July, 2017.

KIRTON McCONKIE

By: /s/Todd E. Zenger  
Todd E. Zenger

Patrick Bright of WAGNER, ANDERSON  
& BRIGHT, PC

Attorneys for Plaintiff  
ARSUS, LLC